IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1222 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESH G JAIN

Versus

BHALCHANDRA VADILAL CHOKSHI

Appearance:

MR KV SHELAT for Petitioner

MR FB BRAHMBHATT for Respondent No. 1

MR HL JANI, Learned APP for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/11/2000

ORAL JUDGEMENT

Rule.

Heard Mr. K.V.Shelat, learned advocate for the petitioner, Mr.H.L.Jani, learned APP waives service of rule on behalf of respondent no.2 and Mr. F.B.Bhrambhat who is appearing in response to notice issued vide earlier order, waives service of rule on behalf of respondent no.1.

The petitioner has prayed to quash the order of process issued by learned Metropolitan Magistrate, Court No.4, Ahmedabad dated 11.1.2000 in the proceedings of Criminal Case No. 48 of 2000.

The respondent no.1 Bhalchandra Vadilal Chokshi has filed Criminal Case No. 48 of 2000 in the Court of Metropolitan Magistrate, Court No.4, Ahmedabad against the present petitioner in the capacity as proprietor of M/s. S.K.Enterprise and has alleged that present petitioner had issued a cheque bearing No. 003355 dated 5.11.1999 for Rs. 1,00,000/- drawn on Progressive Mercantile Cooperative Bank Ltd., Navarangpura, Ahmedabad in favour of the respondent no.1 towards outstanding dues of amount advanced by respondent no.1. That the said cheque when discounted has returned dishonoured with endorsement "funds insufficient". It is averred in the complaint that the demand notice dated 4.12.1999 was issued to the petitioner. However, the petitioner has replied falsely vide letter dated 10.12.1999 and as such, the complaint is filed.

It would be pertinent to note that along with the complaint, the respondent no.2 has produced original cheque in the Court alleged to have been issued by the present petitioner. According to the petitioner, petitioner does not hold any account with the Progressive Mercantile Cooperative Bank Ltd. neither in his name nor in the name of M/s, S.K.Enterprise as proprietor. The petitioner vide reply dated 7.11.2000 has intimated that subject cheque has not been issued by him to respondent no.1. The petitioner has tendered on record the certificate issued by the Progressive Mercantile Cooperative Bank Ltd. wherein it is certified that account of M/s. S.K.Enterprise address 413,28, Alka Shopping Centre, Gita Mandir Road, Ahmedabad - 380 022 is maintained with their Bank by one Shri Shailesh Shantilal Shah as proprietor of the said firm.

On the basis of above stated certificate, the contention urged on behalf of petitioner is fortified that disputed cheque, on which respondent no.1 has based the Criminal Case No. 48 of 2000, is not issued by

present petitioner in the capacity as proprietor of M/s. S.K.Enterprise and as such, no complaint against the present petitioner as a proprietor of M/s. S.K.Enterprise could be maintainable.

Learned advocate for the respondent no.1 Mr. Bharambhat has vehemently urged that complaint is filed against the proprietor of M/s. S.K.Enterprise as the cheque is issued by the proprietor of M/s. S.K.Enterprise and as such, disputed complaint cannot be quashed.

The submission cannot merit acceptance because Annexure-A is a copy of complaint produced on record where description of accused clearly states that Mr. S.G.Jain is the proprietor of M/s. S.K.Enterprise. In view of the said fact and fact apparent from the disputed cheque as well as certificate issued by the Progressive Mercantile Cooperative Bank Ltd., it is clear that disputed cheque has not been drawn by the present petitioner either in his personal capacity or in the capacity as proprietor of M/s. S.K.Enterprise and as such, no complaint for dishonour of such cheque could be maintainable against the present petitioner.

Hence, the present petition is allowed. The impugned complaint along with order dated 11.1.2000 of issuing process against the present petitioner are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J)

(vipul)